

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA

v.

Criminal No. 3:23CR96

DEVON WINFIELD MARTIN,

Petitioner.

MEMORANDUM OPINION

On February 20, 2024, the Court entered judgment against Devon Winfield Martin and sentenced him to thirty months of imprisonment. (ECF No. 36, at 2.) On February 29, 2024, Martin noted an appeal, and that appeal remains pending in the United States Court of Appeals for the Fourth Circuit. (See ECF Nos. 38, 48.)

On January 13, 2025, Martin filed a "Motion to Vacate" pursuant to 28 U.S.C. § 2255. ("§ 2255 Motion," ECF No. 49.) It is well-settled, however, that a motion under section 2255 should not normally proceed while an appeal from the conviction is pending. See 3 Charles A. Wright, et al., Federal Practice and Procedure Criminal § 597 (3d ed. 2008); see also Rules Governing Section 2255 Proceedings for the United States District Courts, Advisory Committee's Note to Rule 5 (explaining that "the orderly administration of criminal law precludes considering such a motion absent extraordinary circumstances" (quoting Womack v. United States, 395 F.2d 630, 631 (D.C. Cir. 1968))). Accordingly, by Memorandum Order entered on January 29, 2025, the Court directed

Martin to show cause within twenty (20) days as to why his § 2255 Motion should proceed during the pendency of his direct appeal. (ECF No. 50, at 1.) The Court explained that the failure to do so would result in the dismissal of Martin's § 2255 Motion without prejudice to re-file after his conviction becomes final. (Id.)

More than twenty (20) days have elapsed, and Martin has not responded. Accordingly, the § 2255 Motion (ECF No. 49) will be denied without prejudice. A certificate of appealability will be denied.

The Clerk is directed to send a copy of this Memorandum Order to Martin and counsel of record.

It is so ORDERED.

_____/s/ *REP*
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: March *17*, 2025